

**INTERGOVERNMENTAL AGREEMENT**  
City of Newport, Local Improvement Districts Implementation Plan

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation ("ODOT" or "Agency"), and the City of Newport ("City" or "Grantee").

**RECITALS**

1. The Transportation and Growth Management ("TGM") Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal Moving Ahead for Progress in the 21<sup>st</sup> Century ("MAP-21") funds. Local funds are used as match for MAP-21 funds.
4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. City has been awarded a TGM Grant which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**SECTION 1. DEFINITIONS**

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

- A. "City's Amount" means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.

B. "City's Matching Amount" means the amount of matching funds which City is required to expend to fund the Project.

C. "City's Project Manager" means the individual designated by City as its project manager for the Project.

D. "Consultant" means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. "Consultant's Amount" means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. "Direct Project Costs" means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. "Federally Eligible Costs" means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by City and Consultant during the term of this Agreement.

H. "Grant Amount" or "Grant" means the total amount of financial assistance (including City's Matching Amount) disbursed under this Agreement, which disbursements consist of the City's Amount and the Consultant's Amount. ODOT may use any of the City's Matching Amount to substitute for an equal amount of federal MAP-21 funds used for the Project or use such funds as matching funds.

I. "ODOT's Contract Administrator" means the individual designated by ODOT to be its contract administrator for this Agreement.

J. "PSK" means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. "Project" means the project described in Exhibit A.

L. "Termination Date" has the meaning set forth in Section 2.A below.

M. "Total Project Costs" means the total amount of money required to complete the Project.

N. "Work Product" has the meaning set forth in Section 5.I below.

## **SECTION 2. TERMS OF AGREEMENT**

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. Further, ODOT's obligation to make any disbursements under this Agreement is subject to payment of the City's Matching Amount by City to ODOT. This Agreement terminates on June 30, 2016 ("Termination Date").

B. Grant Amount. The Grant Amount which includes City's Matching Amount of \$13,500 shall not exceed \$99,000.

C. City's Amount. The City's Amount shall not exceed \$0.

D. Consultant's Amount. The Consultant's Amount shall not exceed \$99,000.

E. City's Matching Amount. The City's Matching Amount is \$13,500. City shall pay ODOT the City's Matching Amount at time of the signing of this Agreement

## **SECTION 3. RESERVED**

## **SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION**

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Grant, City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

C. City understands and agrees that ODOT's obligation hereunder is contingent on ODOT having received funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

## **SECTION 5. GENERAL COVENANTS OF CITY**

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126(2). Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and
- (2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of City's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

"This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21<sup>st</sup> Century ("MAP-21"), local government, and State of Oregon funds.

"The contents of this document do not necessarily reflect views or policies of the State of Oregon."

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its "home page".

J. Unless otherwise specified in Exhibit A, City shall submit all final products produced in accordance with this Agreement to ODOT's Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

K. Within 30 days after the Termination Date, City shall provide to ODOT's Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:

- (a) The permanent location of Project records (which may be subject to audit);
- (b) A summary of the Total Project Costs; and
- (c) A list of final deliverables.

## **SECTION 6. CONSULTANT**

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than City is the party to the PSK with the Consultant, ODOT and City agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. City will appoint a Project Manager to:
  - (1) be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
  - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and City personnel, as necessary;
  - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
  - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

## **SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS**

reserved

B. ODOT represents that the statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

## **SECTION 8. TERMINATION**

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

A. City fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

C. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable



administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

## **SECTION 9. GENERAL PROVISIONS**

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the

Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim ), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including,

without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding mediation or non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. This Agreement may be executed in several counterparts (facsimile or otherwise), all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives are duly authorized, have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**City**

*City of Newport*

By: *Sandra N. Roumagoux*

(Official's Signature)

Sandra N. Roumagoux, Mayor

(Printed Name and Title of Official)

Date: April 21, 2015

**Contact Names:**

Derrick Tokos  
City of Newport  
169 SW Coast Highway  
Newport, OR 97365  
Phone: 541-574-0626  
Fax: 541-574-0609  
E-Mail: D.Tokos@thecityofnewport.net

David Helton, Contract Administrator  
Transportation and Growth Management Program  
644 A Street  
Springfield, OR 97477  
Phone: 541-726-2545  
Fax: 541-744-8088  
E-Mail: David.I.Helton@odot.state.or.us

**ODOT**

STATE OF OREGON, by and through  
its Department of Transportation

By: *Jerri Bohard*

Jerri Bohard, Division Administrator  
Transportation Development Division

Date: 4-29-15

*4-29-15*  
*MR*  
*4-29-15*

**EXHIBIT A  
STATEMENT OF WORK  
TGM 2C-14  
CITY OF NEWPORT  
LOCAL IMPROVEMENT DISTRICT IMPLEMENTATION PLAN**

Name: Address:  Phone: Fax: Email:	<u><b>Agency Project Manager</b></u> David Helton ODOT Region 2, Area 5 644 A Street Springfield, OR 97477 (541) 726-2545 (541) 726-2509 David.I.Helton@odot.state.or.us	Name: Address:  Phone: Fax: Email:	<u><b>Consultant Project Manager</b></u> Carl Springer, Principal DKS Associates 720 SW Washington Street, Suite 500 Portland, OR 97205 (503) 243-3500 (503) 243-1934 cds@dksassociates.com
Name: Address:  Phone: Fax: Email:	<u><b>City Project Manager</b></u> Derrick Tokos City of Newport 169 SW Coast Highway Newport, OR 97365 (541) 574-0626 (541) 574-0644 d.tokos@newportoregon.gov	Name: Address:  Phone: Fax: Email:	

**Definitions**

Agency/ODOT	Oregon Department of Transportation
APM	Agency Project Manager
City	City of Newport
GIS	Geographic Information Systems
LID	Local Improvement District
PAC	Project Advisory Committee
Project	Newport Local Improvement District Implementation Plan Project
SOW	Statement of Work
TPAU	Transportation Planning Analysis Unit
TSP	Transportation System Plan

**Key Personnel**

Contractor acknowledges and agrees that Agency selected Contractor, and is entering into this Contract, because of the special qualifications of Contractor's key people. In particular, Agency through this Contract is engaging the expertise, experience, judgment, and personal attention of Todd Chase of FCS Group (collectively "Key Personnel" or individually "Key Person"). Contractor's Key Person shall not delegate performance of the management powers and

responsibilities he/she is required to provide under this Contract to another (other) Contractor employee(s) without first obtaining the written consent (email acceptable) of Agency. Further, Contractor shall not re-assign or transfer a Key Person to other duties or positions such that a Key Person is no longer available to provide Agency with his/her expertise, experience, judgment, and personal attention, without first obtaining Agency's prior written consent to such re-assignment or transfer. In the event Contractor requests that Agency approve a re-assignment or transfer of a Key Person, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any approved substitute or replacement for a Key Person shall be deemed a Key Person under this Contract.

### **Project Purpose and Transportation Relationship and Benefit**

The Newport Local Improvement District Implementation Plan Project ("Project") will assist the City of Newport ("City") in making Local Improvement Districts ("LIDs") an effective and publicly acceptable funding source and financing tool for needed transportation system improvements.

### **Project Study Area**

The Project Study Area lies entirely within the City of Newport Urban Growth Boundary.

### **Background**

Developing strategies to secure financing to pay for planned transportation system improvements is critical for implementation of a Transportation System Plan ("TSP"). Unfortunately, Newport's 2012 TSP provides little in the way of direction or guidance for how the City should fund transportation improvements. Nonetheless, the City has been creative in developing local funding sources, including urban renewal, local gas taxes, and transient room taxes, and the City actively leverages available state and federal resources. These resources fall well short of being able to adequately fund needed transportation projects.

A funding source that the City has been hesitant to explore is the use of LIDs to fund and finance transportation projects. This is in part due to the perceived complexity of implementing an LID program and the real concern that if done poorly, an LID program could compromise the City's overall financial position. There is also a general lack of understanding amongst the public, staff, and policy makers about what is involved in forming an LID and how this financing tool can be a cost effective solution to funding transportation projects. Consequently, City has only basic LID enabling legislation on its books and has not initiated an LID in many years.

The Project will develop policies, methods, and strategies for the City's use of LIDs to fund and finance needed transportation system improvements.

### **Project Objectives**

Key objectives of the Project include the following:

1. Resolve issues hindering the City's use of LIDs as a funding source and finance tool for transportation improvements.

2. Availability of LIDs as a viable source of funds for needed transportation improvements in the development of improvement plans for existing and developing neighborhoods.

## **Project Approach**

### **Project Management and Roles**

City's Project Manager shall manage the Project by providing guidance and direction to Consultant for development of Project deliverables. City's Project Manager shall review and comment on Project deliverables, participate in Project committees, and encourage involvement of City staff and officials throughout the Project to help ensure final products have the City's support. City shall distribute Consultant deliverables to City staff and advisory committee members for their review and comment. City shall compile all comments on draft deliverables from City and advisory committee members, and provide these to Consultant for consideration during development of revised deliverables. City shall report local match expenditures every two months to ODOT's Agency Project Manager ("APM").

City shall provide Consultant with data and materials available to the City, and obtain data available to Lincoln County that is needed for the Project, including transportation models, land use data, and Geographic Information System ("GIS") layers. Consultant shall collect other data needed for this Project, consistent with tasks assigned to the Consultant in this statement of work ("SOW").

Consultant shall perform work necessary to produce Project deliverables unless otherwise specified in this SOW. Consultant shall prepare Project deliverables and provide these to the City in a format suitable for distribution by e-mail unless hardcopy is specified in a subtask.

Consultant shall maintain regular communication with the City's Project Manager and APM to ensure satisfactory completion of deliverables in accordance with project schedule. Consultant shall arrange and facilitate regularly scheduled conference calls for participation by the City, Consultant, and the APM to discuss project progress, issues, and coordination.

### **Written and Graphic Deliverable Requirements**

All written (text) and graphic deliverables must be submitted in electronic versions. Electronic versions of written (text) deliverables must be in Microsoft Word-compatible (.doc) format. Written deliverables must include the project name, a title that refers to the contract deliverable, version number (if applicable), and date of preparation.

Graphic deliverables may be developed in ArcMap, Adobe Illustrator, Auto CAD, PCMaps, or other applications appropriate to the deliverable. Graphic deliverables submitted for review must be converted to Portable Document (.pdf) format for readability. Electronic files of final graphics submitted to the City and Agency may be in the native application but must also be converted to Portable Document (.pdf) format. All graphic deliverables must be well documented, with

project name, a title that corresponds to the contract deliverable, version number (if applicable), a legend, and the date of preparation.

Maps, aerial photos, and other graphic material prepared for Project deliverables must be suitable for enlargement to create wall displays for Project meetings and presentations. Display-sized maps for Project meetings must be printed in color when color is important to public comprehension and must be mounted on foam core to allow display on an easel or wall; display of all graphics by projector only is not acceptable.

Final plans, codes, and Plan / Code amendments must be prepared as adoption-ready final policy statements of the local government and shall not include language such as “it is recommended ...” or “City should ...” Final plan, plan amendments, code, and code amendments must include all necessary amendments or deletions to existing local government plans or code to avoid conflicts and enable full integration of proposed plan with existing local government documents.

The following text must appear in the final version of all final deliverables:

This project is partially funded by a grant from the Transportation and Growth Management (“TGM”) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Moving Ahead for Progress in the 21<sup>st</sup> Century (“MAP-21”), local government, and the State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.

Consultant name or logos may not appear on final documents, with the exception of the acknowledgement page.

Consultant shall provide any GIS layers used for inventory and graphic deliverables (i.e. volumes, Level of Traffic Stress) to both ODOT’s Transportation Planning Analysis Unit (“TPAU”) and the Geographic Information Services Unit.

### **Meeting Requirements**

City shall schedule meeting dates and times with meeting participants, distribute agendas and meeting materials in advance of the meeting, reserve a suitable meeting location, place advertisements in local media, and post notices in public locations (such as city hall). City shall provide notice for Public Hearings as required.

Consultant shall prepare agendas and meeting materials, lead meetings, and facilitate discussion of relevant issues. Within one week of each Project meeting or public event, Consultant shall provide the City with a brief memo that summarizes key issues discussed at the meeting and implications, if any, for Project schedule, budget, methods, or deliverables.



City shall arrange for public hearings, including legal notice, staff reports, and staff presentations for the Planning Commission and City Council. City shall reproduce copies of materials needed for distribution for the public hearings.

### **Public Involvement**

City shall perform work to support Project, including mailings (including e-mails) to project advisory committee members and interested parties,

City shall distribute press releases, place advertisements in media, write articles and announcements for placement in City publications, identify stakeholders, and conduct similar activities to support public involvement efforts for the Project. Consultant shall prepare text and graphics for all other public involvement material, including the press releases, advertising materials, and mailing/flyer materials as directed by this SOW.

The City shall provide to the Consultant any public comments received by the City. Consultant shall maintain a compilation of public comments received during the Project, and provide an updated compilation of comments to the City.

Public involvement must allow the community an opportunity to provide input into the transportation planning process. City shall consider environmental justice issues, which is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

**Fair treatment** means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

**Meaningful involvement** means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

The public involvement program must include specific steps to provide opportunities for participation by federal Title VI communities. City and consultant shall utilize the ODOT Title VI (1964 Civil Rights Act) Plan guidance to identify Title VI populations, formulate public involvement strategies, and report outreach efforts to and participation by Title VI communities.

## **Statement of Work**

### **Task 1: Project Kickoff and Data Review**

#### **1.1 Background Data Request**

Consultant shall prepare data request to facilitate acquisition of required data from the City. City shall provide Consultant with relevant data and documents available to the City, and acquire data and documents needed for the project from Lincoln County and the Oregon Cascades West Council of Governments. Data provided to the Consultant must include, but are not limited to, the following items:

- City of Newport Comprehensive Plan
- City of Newport Transportation System Plan
- Newport Pedestrian and Bicycle Plan
- South Beach Transportation Refinement Plan
- Urban Renewal District plans
- Capital Improvement Plans
- Zoning and LID-related City ordinances
- City standards for street, sidewalk, trail, and other transportation facilities
- Non-remonstrance Agreements and City's analysis of those agreements
- Mapping or GIS layers showing existing transportation facilities by functional class, tax lot boundaries, extent of existing pavement, properties with non-remonstrance agreements, and other pertinent characteristics to the extent they are available

Consultant shall provide City with request for additional data and documents within three working days after receiving Notice to Proceed on the Project from the APM. City shall strive to provide as much of the information as possible at least one week before the Project Kickoff / Advisory Committee Meeting.

Consultant shall review plans, existing City code/ordinances, pre-existing non-remonstrance agreement information and other data provided by the City to prepare for the Project Kickoff / Advisory Committee Meeting.

#### **1.2 Project Kickoff / Advisory Committee Meeting**

City shall form a Project Advisory Committee ("PAC") by inviting stakeholders such as City Finance Director, City Public Works Director, local developers, elected and appointed government officials, citizen or neighborhood association members, business owners, chamber of commerce leaders, County government staff and others. The City shall maintain an Interested Parties List that includes PAC members and other parties expressing interest in the Project for notification of Project progress, meetings, and presentations.

Consultant shall lead a Project Kickoff / Project Advisory Committee Meeting with City and PAC members. Consultant shall make a presentation at the Project Kickoff Meeting that provides an overview of the project objectives, schedule, and deliverables. Consultant shall facilitate a discussion at the Project Kickoff Meeting of issues related to the use of LIDs as a funding source for transportation projects.

Consultant and City shall participate in a tour of the City's transportation system and sites related to LID implementation in Newport. City will arrange tour logistics including transportation and selection of the routes and sites for the tour. The tour must occur on the same day as the Project Kickoff Meeting.

### **City Deliverables**

- 1.1 Background Data and Documents
- 1.2 PAC Roster and Interested Parties List
- 1.3 Project Kickoff / Advisory Committee Meeting and Tour Logistics

### **Consultant Deliverables**

- 1.A Background Data Request
- 1.B Project Kickoff / Advisory Committee Meeting and Tour

## **Task 2: LID Policy Development**

### **2.1 LID Policy Issues Paper**

Consultant shall prepare LID Policy Issues Paper that identifies key LID policy issues hindering the City's use of LIDs. The LID Policy Issues Paper must be based on the Consultant's review of background information and from input by City, PAC members, and interested parties.

Categories of issues identified in the LID Policy Issues Paper must include the following:

- administrative cost/staffing
- capital cost of needed facilities
- potential local or non-local funding sources to be used to match LID funds
- methods for LID financing
- consideration of pre-existing non-remonstrance agreements
- determining geographic benefit area
- determining benefit to properties

### **2.2 Best Practices Issue Paper**

City shall provide Consultant with a review of the existing LID ordinance and suggestions for improvement. Consultant shall prepare a Best Practices Issue Paper that presents proven and effective ways to gain support for LID implementation, with a focus on practices from cities with limited staffing. For development of the Best Practices Issue Paper, Consultant shall research statutory authority for guiding and implementing LIDs in Oregon, and conduct interviews with

selected local governmental staff and Oregon League of Cities staff to identify innovative and proven practices and lessons learned regarding LID implementation, outreach techniques, and methods for prioritizing transportation projects.

### **City Deliverables**

- 2.1 Review and comment on Consultant deliverables
- 2.2 Circulate Consultant deliverables to City staff and PAC
- 2.3 Legal review of the City's existing LID ordinance

### **Consultant Deliverables**

- 2.A LID Policy Issues Paper
- 2.B Best Practices Issue Paper

## **Task 3: LID Implementation Strategies**

### **3.1 Round 1 Stakeholder Meetings**

Consultant shall conduct Round 1 Stakeholder Meetings in Newport. The purpose of these small group stakeholder meetings is to gather additional input regarding the LID policy issues, strategies and best practices and how they relate to Newport's transportation system improvement needs. City shall identify stakeholder meeting participants and arrange meeting logistics. Consultant shall prepare meeting agenda and meeting materials and facilitate Stakeholder Meetings over the course of one day.

### **3.2 PAC Meeting #2**

Consultant shall lead PAC Meeting #2 in Newport. Consultant shall present a summary of findings in the LID Policy Issues Paper and Best Practices Issues Paper. Consultant shall facilitate a discussion at PAC Meeting #2 to gather input and direction regarding the LID policy issues, strategies and best practices and how they relate to Newport's transportation system improvement needs.

### **3.3 LID Implementation Strategies Paper**

Based on the feedback received from Round 1 Stakeholder Meetings and the PAC, Consultant shall prepare a LID Implementation Strategies Paper that describes recommended techniques and strategies for implementation of LIDs in Newport. The LID Implementation Strategies Paper will focus strategies on the policy issues identified previously (Task 2) and must address items including:

- 1. Methods to be used to evaluate the benefit and cost of LIDs.
- 2. Items to be included with the Engineer's Report on LID formation.

3. Transportation project evaluation and selection criteria to be used when considering new LIDs.
4. Criteria to determine the eligibility of transportation projects for other types of funding sources (e.g., street funds, local gas tax, utility fees, franchise fees, system development charge revenues, etc.)
5. Strategies to leverage existing non-remonstrance agreements.
6. Guidance on the use of future non-remonstrance agreements in lieu of requiring transportation improvements at the time of construction.
7. A draft prototypical non-remonstrance agreement.
8. Guidance on how to effectively administer LIDs given modest City staffing and resources.
9. Guidance on how to mitigate risk to local jurisdictions when financing LIDs.
10. Effective property owner and stakeholder outreach techniques.

### **City Deliverables**

- 3.1 Round 1 Stakeholder Meetings
- 3.2 PAC Meeting #2

### **Consultant Deliverables**

- 3.A Round 1 Stakeholder Meetings
- 3.B PAC Meeting #2
- 3.C LID Implementation Strategies Paper

### **Task 4: Model Code**

#### **4.1 Draft LID Ordinance and Plan / Code Amendments**

Consultant shall prepare Draft LID Ordinance and Plan / Code Amendments. The Draft LID Ordinance and Plan / Code Amendments must include municipal code and Comprehensive Plan amendments that implement strategies in the LID Implementation Strategies Paper identified by the City as suitable for adoption.

#### **4.2 PAC Meeting #3**

Consultant shall lead a discussion at PAC Meeting #3 to gather input and direction regarding the LID Implementation Strategies Paper and the Draft LID Ordinance and Plan / Code Amendments.

#### **4.3 Revised LID Ordinance and Plan / Code Amendments**

City shall coordinate with City attorney and City staff to obtain legal review of Draft LID Ordinance and Plan / Code Amendments. City shall provide Consultant with electronic version of LID Ordinance and Plan / Code Amendments with legal review input in track changes format.

Consultant shall prepare the Revised LID Ordinance and Plan / Code Amendments based on input from legal review, City, and PAC members. Revised municipal code and Comprehensive Plan amendments must be consistent with existing City plans and policies and implement strategies in the LID Implementation Strategies Paper.

#### **City Deliverables**

- 4.1 Identification of Implementation Strategies for development of Draft LID Ordinance and Plan / Code Amendments
- 4.2 PAC Meeting #3
- 4.3 Review and comment on Project deliverables

#### **Consultant Deliverables**

- 4.A Draft LID Ordinance and Plan / Code Amendments
- 4.B PAC Meeting #3
- 4.C Revised LID Ordinance and Plan / Code Amendments

#### **Task 5: Case Study Analysis**

##### **5.1 Round 2 Stakeholder Meetings**

Consultant shall conduct Round 2 Stakeholder Meetings in Newport. Purpose of these small group stakeholder meetings is to gather input regarding potential LID pilot case study areas and how the proposed improvements translate into measurable benefits to properties and how they relate to Newport's transportation system improvement needs. City shall identify stakeholder meeting participants and arrange meeting logistics. Consultant shall prepare meeting agenda and meeting materials and facilitate meetings over the course of one day.

##### **5.2 Case Study Analysis and LID Model**

Consultant shall develop and utilize a LID Cost Allocation and Benefit Model ("LID Model") to conduct a preliminary assessment of the LID costs and benefits for two pilot case study areas selected by the City. Consultant shall identify all existing tax lots and summarize existing and planned development levels, for each case study area. Consultant shall identify transportation facility improvement costs, LID assessments, and existing and future changes in vehicle and person trip generation by tax lot. Consultant shall provide City with an Excel-based LID Model that can be used to analyze LID assessment benefits, costs and individual allocations among properties in Newport. Consultant shall summarize results of the preliminary assessment of LID costs and benefits using the LID Model in a Case Study Analysis.

### **5.3 PAC Meeting #4**

Consultant shall lead PAC Meeting #4 in Newport. Consultant shall present an overview of the LID Cost Allocation and Benefit Model and a summary of findings in the Case Study Analysis. Consultant shall facilitate a discussion at PAC Meeting #4 to gather input and direction regarding the preliminary assessment of LID costs and benefits for the two pilot case study areas.

#### **City Deliverables**

- 5.1 Round 2 Stakeholder Meetings
- 5.2 Selection of Study Areas for Case Study Analysis
- 5.3 PAC Meeting #4

#### **Consultant Deliverables**

- 5.A Round 2 Stakeholder Meetings
- 5.B Case Study Analysis and LID Model
- 5.C PAC Meeting #4

### **Task 6: Final Plan**

#### **6.1 City Work Session**

Consultant shall attend a Work Session in Newport for City Council, Planning Commission, and City staff. Consultant shall provide a presentation that summarizes Project findings and recommendations in the LID Implementation Strategies Paper, Revised LID Ordinance and Plan / Code Amendments, and the Case Study Analysis. Consultant shall provide the City with presentation slides for the City's use for future presentations. City shall make arrangements for the City Work Session, including room reservation, inviting participants, and providing notice as required.

#### **6.2 Draft LID Implementation Plan**

Consultant shall prepare a Draft LID Implementation Plan that summarizes Project goals and objectives, findings and recommendations. The Draft LID Implementation Plan must include final municipal code and plan amendments needed to implement LIDs as a funding source for transportation projects. Consultant shall provide an electronic version of the Draft LID Implementation Plan to the City for review by staff, officials, and PAC members.

#### **6.3 Public Meeting or Public Hearing**

Consultant shall assist City in leading a Public Meeting or Public Hearing in Newport to present and discuss the Draft LID Implementation Plan findings and recommendations. Consultant shall prepare meeting agenda and meeting materials and facilitate the Public Meeting or Public

Hearing over the course of one evening. City shall provide any required legal notice for a Public Hearing and any required staff report including findings.

#### **6.4 Final LID Implementation Plan**

City shall compile one set of edits and comments on the Draft LID Implementation Plan in track changes format and provide this electronically to the Consultant. Consultant shall prepare the Final LID Implementation Plan based on edits provided by the City.

##### **City Deliverables**

- 6.1 Arrangements for City Work Session
- 6.2 Review and comment on Project deliverables
- 6.3 Legal Notice and logistics for Public Meeting or Public Hearing
- 6.4 Edits to Draft LID Implementation Plan

##### **Consultant Deliverables**

- 6.A City Work Session
- 6.B Draft LID Implementation Plan
- 6.C Public Meeting or Public Hearing
- 6.D Final LID Implementation Plan



### Consultant Deliverable Amounts and Schedule

Task / Deliverable		Consultant Amount
<b>Task</b>		
<b>1</b>	<b>Project Kickoff and Data Review</b>	<b>\$7,600</b>
1.A	Background Data Request	\$3,400
	Project Kickoff / Advisory Committee Meeting and	
1.B	Tour	\$4,200
<b>Task</b>		
<b>2</b>	<b>LID Policy Development</b>	<b>\$18,200</b>
2.A	LID Policy Issues Paper	\$7,500
2.B	Best Practices Issue Paper	\$10,700
<b>Task</b>		
<b>3</b>	<b>LID Implementation Strategies</b>	<b>\$15,600</b>
3.A	Round 1 Stakeholder Meetings	\$5,400
3.B	PAC Meeting #2	\$2,800
3.C	LID Implementation Strategies Paper	\$7,400
<b>Task</b>		
<b>4</b>	<b>Model Code</b>	<b>\$14,500</b>
4.A	Draft LID Ordinance and Plan / Code Amendments	\$8,200
4.B	PAC Meeting #3	\$3,300
4.C	Revised LID Ordinance and Plan / Code Amendments	\$3,000
<b>Task</b>		
<b>5</b>	<b>Case Study Analysis</b>	<b>\$25,100</b>
5.A	Round 2 Stakeholder Meetings	\$5,200
5.B	Case Study Analysis and LID Model	\$17,200
5.C	PAC Meeting #4	\$2,700
<b>Task</b>		
<b>6</b>	<b>Final Plan</b>	<b>\$18,000</b>
6.A	City Work Session	\$3,000
6.B	Draft LID Implementation Plan	\$7,200
6.C	Public Meeting or Public Hearing	\$5,500
6.D	Final LID Implementation Plan	\$2,300
<b>TOTAL</b>		<b>\$99,000</b>

### Project Schedule

	Task	Schedule
Task 1	Project Kickoff and Data Review	April-May 2015
Task 2	LID Policy Development	May-July 2015
Task 3	LID Implementation Strategies	July-October 2015
Task 4	Model Code	October-December 2015
Task 5	Case Study Analysis	January-March 2016
Task 6	Information Materials and Final Plan	March-June 2016

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**AGENCY OFFICIAL CERTIFICATION (ODOT)**

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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**EXHIBIT C**

Federal Provisions  
Oregon Department of Transportation

**I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- |  |   |
|--|---|
| 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; | criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property; |
| 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a                  |   |

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

#### **EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

#### **II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS-PRIMARY COVERED TRANSACTIONS**

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous

certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

### III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

#### **Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

##### Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be

entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment,

without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

#### VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

#### DBE POLICY STATEMENT

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

#### CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

#### VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to

influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**FOR INQUIRY CONCERNING ODOT'S  
DBE PROGRAM REQUIREMENT  
CONTACT OFFICE OF CIVIL RIGHTS  
AT (503)986-4354.**